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VOLUNTARY DISCLOSURE PROGRAM

GUIDELINES

A. PURPOSE

1. The Department of Defense (DoD) encourages Defense contractors to adopt a policy of voluntarily disclosing potential civil or criminal fraud matters affecting their corporate contractual relationship with the DoD as a central part of their corporate self-governance and to enhance contractor responsibility under the Federal Acquisition Regulations. The policy is described in letters from the Deputy Secretary of Defense to Defense contractors, dated July 24, 1986, and August 10, 1987 (Appendix A). The Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight (DAIG-CIPO), Office of the Inspector General, DoD, is the designated point of contact for voluntary disclosures of potential criminal or civil fraud issues. Matters not involving fraud should be presented to the appropriate contracting officer or Defense Contract Audit Agency (DCAA) auditor.

2. The disclosures are made with no advance agreement regarding possible DoD resolution of the matter and with no promises regarding potential civil or criminal actions by the Department of Justice (DoJ). Prompt voluntary disclosure, full cooperation, complete access to necessary records, restitution, and adequate corrective actions are key indicators of an attitude of contractor integrity even in the wake of disclosures of potential criminal liability.

3. The DoD Voluntary Disclosure Program is intended to afford contractors the means to report self-policing activities. It provides a framework for Government verification of the matters voluntarily disclosed and an additional means for a coordinated evaluation of administrative, civil, and criminal actions appropriate to the situation.

4. This pamphlet identifies the participating DoD and DoJ organizations and describes the process by which voluntary disclosures are reported, verified and acted on. The complete process for managing voluntary disclosures is depicted in a flowchart (Appendix B).

B. ORGANIZATIONAL FUNCTIONS

The organizations listed below have the following functions under the DoD Voluntary Disclosure Program:

1. Office of the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight (DAIG-CIPO)

The DAIG-CIPO receives the initial disclosure, makes a preliminary determination as to whether the disclosure satisfies the requirements of the DoD Voluntary Disclosure Program, coordinates the execution of the standard Voluntary Disclosure Agreement, assigns the matter to a Defense Criminal Investigative Organization (DCIO) for verification, assigns the matter to a suspension and debarment authority, and coordinates the matter with the DoJ for potential civil and criminal action. The DAIG-CIPO also serves as the focal point for the dissemination of general information concerning the Voluntary Disclosure Program, is responsible for administering the Program, and coordinates administrative action within the DoD.

2. Defense Criminal Investigative Organizations (DCIOs)

The U.S. Army Criminal Investigation Command (USACIDC), the Naval Criminal Investigative Service (NCIS), the Air Force Office of Special Investigations (AFOSI), and the Defense Criminal Investigative Service (DCIS) are the Defense Criminal Investigative Organizations (DCIOs) that conduct investigations under the Program. One DCIO will serve as the lead investigative agency. Following admission into the DoD Voluntary Disclosure Program, the lead DCIO in coordination with other DCIOs when appropriate, conducts an investigation to verify the accuracy and completeness of the matter(s) disclosed. The lead DCIO, may request the Defense Contract Audit Agency (DCAA) to conduct a verification audit that will generally be based on the contractor's internal report of investigation. The lead DCIO coordinates its activities with the DAIG-CIPO, the DoJ, the DCAA, and the cognizant suspension and debarment authority.

3. Defense Contract Audit Agency

The DCAA will, in most instances, be requested by the lead DCIO to conduct a verification audit of the matter(s) disclosed. The audit normally begins following receipt of the contractor's internal report of investigation and focuses on those matter(s) disclosed in the internal report of investigation not covered by a previous audit.

4. DoD Suspension and Debarment Authorities

A Military Department or Defense Agency has lead agency responsibility for any suspension or debarment determination resulting from the matter(s) disclosed. The decision whether or not to initiate suspension or debarment action takes into consideration, among other things, the Government verification of the contractor's disclosure, the contractor's cooperation, the adequacy of corrective action, and restitution.

5. The Department of Justice

a. The Department of Justice Guidelines regarding the Voluntary Disclosure Program set forth complete guidance for the Department of Justice on referral, investigation and prosecution of voluntary disclosure matters.

b. The Federal Procurement Fraud Unit (Unit) in the Fraud Section, Criminal Division, DoJ, is the point of contact within the DoJ to oversee voluntary disclosure matters. The Unit reviews all voluntary disclosure matters.

(1) The Unit conducts, or refers to the appropriate U.S. Attorney's Office to conduct, whatever preliminary inquiry is deemed necessary to determine whether there is specific credible evidence suggesting prosecutable violations of Federal laws. If such evidence exists, the matter will be investigated.

(2) The United States Attorney's Office notifies and obtains the concurrence of the Unit prior to any decision to prosecute or decline prosecution of a volunteer corporation.

c. (1) In deciding whether to prosecute, where the law and evidence is otherwise sufficient to initiate prosecutive action, the prosecutor considers among other factors, the truthfulness, completeness, and timeliness of the disclosure; the quality and quantity of the information provided therein; whether a compliance program, including preventive measures, was in place prior to the illegal activity; the extent of the fraud; the pervasiveness of the fraud; the level of the corporate officials involved in the fraud; the degree, extent, quality, and timeliness of the contractor's cooperation in the verification of the disclosure; and the remedial action taken by the contractor.

(2) The determination of whether to initiate or decline prosecution is the sole responsibility of the Department of Justice in accordance with the recommended criteria set forth in the DoJ Voluntary Disclosure Guidelines.

d. The Civil Division, Department of Justice, is responsible for determining whether to seek civil fraud damages in voluntary disclosure matters.

C. DESCRIPTION OF PROCESS

1. The Initial Disclosure

a. The DAIG-CIPO - Defense contractors wishing to make a disclosure as part of the DoD Voluntary Disclosure Program should be directed to the Office of the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight (DAIG-CIPO), telephone (703) 604-8711.

b. Confirmation Letter - When the initial contact with the DAIG-CIPO is made by telephone, the contractor will be asked to send a letter confirming the information presented.

2. Case Control Number

Control Number - A control number is assigned to each voluntary disclosure (e.g., CIPO 012). The control number is reflected on all communications between the DAIG-CIPO, the Military Departments, the Defense Agencies, and the DoJ. The control number is not intended to replace any internal DCIO or DoJ assigned case identification number.

3. Preliminary Acceptance

a. Criteria - A matter will be preliminarily accepted into the DoD Voluntary Disclosure Program if the DAIG-CIPO determines that:

(1) the contractor disclosed sufficient information as defined in paragraph C.3b. below, and

(2) the disclosure was not triggered by the contractor's recognition that the potential criminal or civil fraud matter or the underlying facts were about to be discovered by the Government through audit, investigation, contract administration efforts, or reported to the Government by third parties. One factor in determining whether the requirement has been met is whether the Government had prior knowledge of the matter(s) disclosed.

b. Sufficient Information

(1) Information sufficient for preliminary acceptance into the DoD Voluntary Disclosure Program requires the contractor to disclose, at a minimum, the contractor's name, the corporate division(s) affected, the location of the affected division(s), the Defense Agency(ies) and Military Department(s) affected if known, and the nature and description of the potential fraud. The contractor should also provide, if known,

the DoD component with contract administration responsibility, along with the contract number and type, and the estimated financial impact to the Government. Sufficient information should include the nature, effect, time period, and any proposed remedy for the defect, as well as the identification of all end users if the matter disclosed involves defective products or testing,

(2) Since the DoD recognition of a contractor as a "volunteer" depends on the disclosure not being triggered by the contractor's recognition that the potential civil or criminal fraud matter or the underlying facts were about to be discovered by or disclosed to the Government, the DAIG-CIPO must have sufficient information regarding the disclosure to do the following:

(a) Conduct an inquiry to learn if the Government had prior knowledge of the matter disclosed by matching factual information from existing investigations and audits with the new disclosure (see paragraph C.6 below).

(b) Determine whether to delay the audit and investigation until the contractor's report of investigation has been received (see paragraph C.13. below).

(c) Determine whether later identified matters are within the scope of the original disclosure.

c. Date of Preliminary Acceptance - The date on which the contractor discloses sufficient information in accordance with paragraphs C.3.a and b. above, is the date on which the matter is determined to have been preliminarily accepted into the DoD Voluntary Disclosure Program. When the standard Voluntary Disclosure Agreement (hereafter referred to as the "XYZ Agreement," Appendix C) is executed, the date of admission into the DoD Voluntary Disclosure Program relates back to the date of preliminary acceptance.

4. Failure to Disclose Information

The DAIG-CIPO may refuse to admit a matter into the DoD Voluntary Disclosure Program if the DAIG-CIPO determines that the contractor knowingly failed to disclose relevant available information, and such information is obtained through other sources.

5. Notification Requirements Relating to Defective Products and Testing

When a disclosure concerns defective products or testing, the lead DCIO promptly notifies the affected Military

Department(s) and Defense Agency(ies) of any potential safety or operational hazards. This notification is required by DoD Directive 7050.5, "Coordination of Remedies for Fraud and Corruption Related to Procurement Activities," June 7, 1989.

6. Inquiry for Prior Government Knowledge

a. Initiation of Inquiry - Based on the information supplied by the contractor, the DAIG-CIPO conducts an inquiry to determine whether the Government had prior knowledge of the matter disclosed. The inquiry is neither binding nor conclusive as to whether the disclosure was triggered by the contractor's recognition that the underlying facts of the potential fraud were about to be discovered by the Government, or as to whether the matter should be admitted into the DoD Voluntary Disclosure Program. Rather, it is one factor considered in making a preliminary determination whether to admit the matter.

b. Inquiry Assignment - Once sufficient information is provided by the contractor, the DAIG-CIPO conducts an initial inquiry to determine whether the Government had prior knowledge of the matter disclosed. In most instances, the following inquiries are made:

(1) DCIO Inquiry - A DCIO is requested to conduct a Defense Central Index of Investigations (DCII) check for open cases that could incorporate the matter(s) disclosed. When appropriate, the DCIO may be requested to make further inquiries to DCIO field offices as to the matter(s) disclosed.

(2) DCAA Inquiry - The DCAA representative to the Federal Procurement Fraud Unit (FPFU) is asked to determine whether the matter(s) disclosed is:

(a) a matter presently proposed for audit by DCAA where notification has been given to the company;

(b) a matter that is presently or has been the subject of a DCAA audit; or

(c) a matter in which the DCAA has issued an audit report or report of suspected irregularity. The DCAA has issued an audit report or report of suspected irregularity. The DCAA is also asked to provide information regarding the nature and scope of the audit to determine whether the DCAA audit activities could incorporate the matter(s) disclosed.

(3) Federal Bureau of Investigation (FBI) Inquiry - The FBI representative to the FPFU is requested to determine whether there is an ongoing or previously conducted FBI investigation that could incorporate the matter(s) disclosed.

(4) Federal Procurement Fraud Unit Inquiry - The FPFU is requested to determine whether there are any ongoing or previously conducted criminal investigations or litigation that could incorporate the matter(s) disclosed. If the matter(s) disclosed suggest possible antitrust implications, the FPFU is asked to determine whether there are any ongoing or previously conducted antitrust investigations or litigation that could impact on the disclosure.

(5) Civil Division, DoJ, Inquiry - The Civil Division, DoJ, is requested to determine whether there are any ongoing or previously conducted civil investigations or litigation, including False Claims Act qui tam suits (31 USC 3729 et. seq.), in which the matter(s) disclosed could be incorporated.

(6) Suspension and Debarment Inquiry - The cognizant suspension and debarment authority is requested to determine whether there are any ongoing or prior suspension and debarment actions that could involve the matter(s) disclosed.

(7) Other Inquiries - When appropriate, other Inspector General and investigative agencies may be contacted to inform them of matters that may impact on their programs or operations, or determine whether they are aware of any investigations or litigation that may impact on the matter(s) disclosed.

7. Notification of Preliminary Acceptance

When a decision is made to preliminarily accept a matter into the DoD Voluntary Disclosure Program, the contractor is advised in writing (Appendix D). The letter explains that the contractor's continued participation in the program is contingent on prompt execution of the standard XYZ Agreement, compliance with the terms of the XYZ Agreement, and compliance with the requirements set forth in the Deputy Secretary of Defense letter of July 24, 1986. The standard XYZ Agreement is enclosed with the letter. Copies of the letter are forwarded to the FPFU; the Civil Division, DoJ; the assigned DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

8. Matters Rejected

The contractor is advised in writing if the matter is rejected from inclusion in the Voluntary Disclosure Program (Appendix E). The letter, however, encourages the contractor to cooperate in the Government audit and investigation. Copies of the letter are forwarded to the FPFU; the Civil Division, DoJ; the DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

9. XYZ Agreement

The standard XYZ Agreement is used in all disclosure matters absent compelling circumstances requiring deviation. The XYZ Agreement should be signed promptly by an authorized director or officer of the contractor, preferably within two weeks of receipt, and returned to the DAIG-CIPO. When signed by all required signatories, copies are sent to the FPFU; the Civil Division, DoJ; the assigned DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

10. Failure to Sign XYZ Agreement

The DAIG-CIPO will attempt to resolve any outstanding issues concerning the XYZ Agreement. In the event the contractor refuses to sign the XYZ Agreement or makes demands that are unacceptable to the Government, the DAIG-CIPO will advise the contractor in writing of the removal of the matter from the DoD Voluntary Disclosure Program (Appendix F). Copies of the letter are forwarded to the FPFU; the Civil Division, DoJ; the DCIO(s); the DCAA; and the suspension and debarment authorities.

11. Notification of Admission into the Voluntary Disclosure Program

Following execution of the XYZ Agreement, the DAIG-CIPO notifies the contractor in writing confirming the admission of the matter into the DoD Voluntary Disclosure Program (Appendix G). The contractor, if it has not already done so, will be asked to inform the DAIG-CIPO within ten days of the execution of the XYZ Agreement whether a written report will be provided describing the results of the contractor's internal investigation. In addition, the contractor is informed that any written report should be submitted within 60 days of the initial disclosure. The DAIG-CIPO's confirmation letter will identify the responsible DCIO(s), the cognizant suspension and debarment authority, and the points of contact within each. Copies of the letter are sent to the FPFU; the Civil Division, DoJ; the responsible DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

12. Contractor Internal Report of Investigation

a. Internal Investigation - The contractor determines whether an internal investigation will be conducted. While the Government does not require such an investigation, it generally is in the best interest of the contractor to conduct their own investigation and submit a report describing the results.

b. Timely Completion of Report - Contractors choosing to provide CIPPO with a written report describing the results of their internal investigation are requested to submit their report within 60 days of the initial disclosure. If the contractor is unable to complete the report within 60 days, the contractor should request an extension of time. The DAIG-CIPPO will determine if and on what basis an interim report(s) should be provided.

c. Distribution of Report - The DAIG-CIPPO sends to the contractor a letter confirming receipt of the contractor's internal report of investigation (Appendix H), and distributes copies (with restrictive markings to protect proprietary/sensitive contents) to the assigned DCIO(s); the FPFU; the Civil Division, DoJ; the DCAA (if the disclosure relates to contract fraud); and the assigned suspension and debarment authority. When appropriate, the FPFU distributes a copy to a U.S. Attorney for prosecutive review. The Civil Division, DoJ, forwards a copy to any U.S. Attorney involved in related civil litigation.

13. Government Actions Pending Contractor Internal Investigation

a. Timing of Government Investigation - As a general rule, the Government does not begin the verification process or conduct its own audit or investigation until it has received the contractor's internal report of investigation. The Government, however, reserves the right to begin its own audit or investigation at any time. Under certain circumstances, the contractor may be asked to discontinue or limit its internal investigation.

b. Statute of Limitations - During completion of the contractor's internal investigation, if the Government determines that the criminal or civil statute of limitations will expire as to the matter disclosed, or any part thereof, within one year after submission of the contractor's report, the Government, at its option, may request the contractor to waive the statute of limitations for a period it deems appropriate. Refusal to waive the statute of limitations will be considered in evaluating the cooperation of the contractor.

14. Verification

a. Investigative Plan - Following receipt of the contractor's internal report, the designated DCIO(s) begins the verification process. The verification audit and investigation are given sufficiently high priority to allow for its expedited completion. The DCIO prepares a written investigative plan and

coordinates it with the criminal prosecutor assigned to the matter, and the Civil Division, DoJ. The plan focuses the investigation, serves as a roadmap for the DCIO(s), and provide a means for the DCIO(s) to track the progress and ensure timely completion of the verification process.

b. DCAA Verification Audit - The DCIO(s), in most instances, request the DCAA to conduct a verification audit. The DCAA auditor assigned to the matter is briefed on the investigative plan to ensure a coordinated effort. If sufficient information is available and the circumstances warrant, the DCIO(s) may begin its own investigation prior to completion or in conjunction with the audit.

c. Scope of Verification Audit and Investigation - The scope of the verification audit and investigation focus specifically on the matters disclosed by the contractor, and include the quantification of the Government losses and potential civil forfeitures under the False Claims Act. Unrelated fraud allegations developed during the verification process are pursued by the initiation of an independent audit or investigation in accordance with normal procedures unless their relationship to the matter disclosed is so commingled as to prevent their severance. Such allegations are not treated as part of the Voluntary Disclosure Program without prior coordination with the DAIG-CIPO.

15. Contractor's Cooperation During the Verification

The contractor's cooperation is essential to the verification audit and investigation. Problems regarding the contractor's cooperation that cannot be readily resolved by the DCIO field agent and the DCAA auditor (e.g., refusal to supply records or allow interviews), are promptly brought to the attention of the respective headquarters of the DCIO(s) and the DCAA for resolution. Where the contractor's cooperation is unsatisfactory, the headquarters of the DCIO and/or the DCAA promptly notify the DAIG-CIPO in an attempt to resolve the issue. The DAIG-CIPO will, in turn, notify the FPFU of the unsatisfactory cooperation. When appropriate, the DAIG-CIPO, with the assistance of the Office of the General Counsel, DoD, will attempt to resolve the problem with counsel representing the contractor.

16. Use of Subpoenas

The DoD Voluntary Disclosure Program assumes contractor cooperation. Should subpoenas for documents be necessary, it is standard procedure to use Inspector General subpoenas rather than grand jury subpoenas. Prior to the issuance of a grand jury subpoena in a voluntary disclosure matter, the assigned DCIO

agent promptly notifies the DCIO headquarters, which in turn, notifies the DAIG-CIPO.

17. Defense Criminal Investigative Organizations (DCIOs) Case Management and Progress Reports

a. Progress Report - The DCIO headquarters monitor all voluntary disclosure matters assigned to their organization to ensure adequate progress and expeditious completion. The DCIOs forward a progress report for each voluntary disclosure investigation every 90 days to the DAIG-CIPO (Appendix 1). On receipt of the 90-day progress report, the DAIG-CIPO forwards a copy to the FPFU; the Civil Division, DoJ; and the DCAA. The progress reports separately summarize each ongoing investigation, incorporating the following information:

(1) subject(s), including corporate name, affected division(s), and affected location(s);

(2) the investigative organization assigned case number, the CIPO assigned disclosure control number, and the DCIO(s) field office assigned to conduct the investigation;

(3) an initial summary, including allegations, Military Departments and Defense Agencies affected, the time frame in which the allegation occurred, the identification of contracts under investigation, the status of the contracts, and the contractor's estimated cost impact to the Government;

(4) matters involving defective products or testing include a description of the defect, the effect on health or safety, the time period involved, notice to the users, and corrective action taken;

(5) updates include all newly acquired information including prosecutive status (both civil and criminal), new cost impact figures calculated by either the contractor or the DCAA, changes in the scope of the investigation, new allegations raised, or allegations determined to be unfounded;

(6) other significant information to be reported includes declination of prosecution, criminal indictment, use of subpoenas, and any problems arising during the audit and investigation such as poor cooperation or need for subpoenas;

(7) date audit was completed and date the investigation was closed; and

(8) monies offered by the corporation, accepted by the Government, including checks, credits or other offsets.

b. Progress Report Reviews - Each DCIO schedules a meeting at a location of its choice within 14 days of the progress report to review the status and planned actions of each open investigation. Attendees at the meeting may include a representative from the ODAIG-CIPO; the DCIO; Office of General Counsel, DoD; the FPFU and Civil Division, DoJ.

18. Payments by Contractors

a. Required Coordination with the Civil Division, DoJ - Collection of any civil damages for all DoD voluntary disclosure matters is the responsibility of the Civil Division, DoJ. Unsolicited payments, restitution, or any other funds representing the contractor's estimate of the cost impact of the matters disclosed are coordinated with the Civil Division, DoJ, and the FPFU prior to acceptance. While it should be determined if the contractor is willing to make restitution, specific requests for payment are coordinated with the Civil Division, DoJ, and the FPFU. When it is agreed that payment is appropriate, contractors desiring to pay restitution or make good faith reimbursements are instructed to provide a check to the DAIG-CIPO made payable to "the Treasurer of the United States."

b. Other Required Coordination - The Civil Division, DoJ, consults with the criminal prosecutor assigned to the matter, the DAIG-CIPO, and the suspension and debarment official, and determines whether immediate payment by the contractor would be in the Government's best interests with respect to its potential civil remedies.

c. Requirements Affecting Good Faith Reimbursements - When determined that an unsolicited payment will be accepted or a payment will be solicited and accepted, the acceptance is conditioned on a written agreement with the contractor that provides:

(1) acceptance of the payment does not constitute the Government's agreement as to the contractor's ultimate civil or criminal liability for the matter(s) disclosed, and

(2) acceptance shall not prejudice the Government's right to obtain additional damages, fines, and penalties for the matter(s) disclosed.

19. Removal of a Matter from the DoD Voluntary Disclosure Program

a. Reason for Removal - The DAIG-CIPO may remove a matter from the DoD Voluntary Disclosure Program at any time during the verification process if:

(1) the disclosure is determined not to meet the Program requirements as set forth in the Deputy Secretary of Defense letter of July 24, 1986, or

(2) the contractor has violated the terms of the signed XYZ Agreement.

b. Notice of Removal - Prior to removing a matter from the Voluntary Disclosure Program, the DAIG-CIPO will notify the contractor in writing of the proposed decision to remove the matter, and may provide the contractor an opportunity to respond (Appendix J). A copy of the letter is sent to all DCIOs, suspension and debarment authorities, the FPFU, the Civil Division, DoJ, and the DCAA. The decision to remove is at the sole discretion of the DAIG-CIPO.

20. Case Completion

a. Records Required - A matter administered under the DoD Voluntary Disclosure Program is closed when the following documents have been provided to the DAIG-CIPO:

(1) Notification by the designated DCIO(s) that both the audit and investigation are completed and the matter is closed. The notification identifies the DCAA final dollar impact determination to the Government, the final settlement, and the manner in which the losses were recovered or otherwise resolved.

(2) A letter from the FPFU either confirming the declination of criminal prosecution or indicating the results of any prosecutive actions taken.

(3) A letter from the Civil Division, DoJ, declining civil litigation or indicating the results of civil litigation or settlements.

(4) A letter from the FPFU indicating the results of any prosecutive actions or settlements if the Antitrust Division, DOJ, is involved in the investigation, or a U.S. Attorney has reviewed the matter for potential antitrust violations.

(5) A letter from the designated suspension and debarment authority advising the DAIG-CIPO in writing of any action taken or to be taken as to suspension or debarment of the contractor or persons within the contractor's organization.

b. Notification that the Matter is Closed - The DAIG-CIPO notifies the DoD contractor in writing that the matter(s) administered under the Voluntary Disclosure Program is closed when the appropriate documents mentioned in paragraph C.20.a.(1) through (5) are received (Appendix K).